BAIL SLIP

The Accused/Appellant namely Kallia Morthy was directed to be relesed on bail as per the order of this Court dated 27.07.2001 and made in Crl.M.P.No. 4170 of 2001 in Crl. Appeal.No. 587 of 2001.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.06.2007

CORAM:

THE HONOURABLE MR.JUSTICE A.C.ARUMUGAPERUMAL ADITYAN

CRIMINAL APPEAL No.587 of 2001

Kallia Morthy ..Appellant/accused

-vs-

State by Inspector of Police
Koradacherry Police Station
Nagapattinam
Cr.No.29/2000 .. Respondent/complainant

This appeal is filed against the Judgment made in S.C.No.151 of 2000 dated 28.9.2000 on the file of the Court of the Principal Sessions Judge,Nagapattinam.

For appellant : Mr.K.Pasupathy

For respondent : Mr.V.R.Balasubramaniam
Additional Public Prosecutor.

JUDGMENT

This appeal has been preferred against the Judgment in S.C.No.151 of 2000 on the file of Court of the Principal Sessions Judge, Nagapattinam.

2) The accused, who was convicted and sentenced by the learned Principal Sessions Judge under Section 304(ii) of IPC to undergo ten years rigorous imprisonment, is the appellant herein.

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3) The short facts of the prosecution case are that on 25.1.2000 at about 1.00p.m., when the accused requested his wife/deceased to prepare a dish with tender pumpkin, she refused the same for want of ginglee oil, the accused got enraged assaulted her with a stick on the head causing grievous injuries, resulting her instantaneous death.

4) On the basis of the complaint preferred by P.W1, the ocular witness to the occurrence, the learned Judicial Magistrate, Thiruvarur had taken the case on file as PRC NO.17/2000. On appearance of the accused, copies under Section 207 of Cr.P.C. were furnished to the accused and since the case is triable by the Court of Sessions, the learned Judicial Magistrate had committed the case to the Court of Sessions under Section 209 of Cr.P.C. and on appearance of the accused, the learned Sessions Judge has framed charges under Section 304(ii) of IPC and when questioned the accused, pleaded not guilty.

5) On the side of the prosecution, P.Ws 1 to 9 were examined. Exs P1 to P11 were exhibited and M.Os 1 to 6 were marked.

6) P.Ws 1 and 2 are the ocular witnesses. P.W.1 the complainant under Ex P1,who would depose that on 25.1.2000 at about 1.00pm., while he along with his wife, children and her aunt were in the house, she heard a noise from the house of the accused at about 1.00p.m., and immediately he along with his aunt Mayilammal(P.W.2) went inside the house of the acused and saw the accused requesting his wife to prepare a dish with tender pumpkin which was refused by his wife/deceased on the ground that there was no ginglee oil available in the house to prepare the said dish. Suddenly the accused got infuriated and assaulted the deceased with a bamboo stick causing grievous injuries on her head resulting , instantaneous death and that he had preferred Ex P1 complaint at about 2.30p.m., with Koradacherry Police.

6a) P.W.2 is the brother of the accused. According to him, the accused was living with his wife in a house at Kuzhikaraithoppu. But he used to quarrel with his wife very often and on the date of occurrence, he was in the house of his another deceased brother Manickam and at that time he heard some noise from the house of the deceased and immdiately he had rushed to the house of the accused where he saw the accused assaulting the deceased with a bamboo stick on her head, which resulted in her instantaneous death. He has also identified M.O.1 bamboo stick used by the accused at the time of occurrence.

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6b) P.W.3 and P.W.4 are not the ocular witnesses but they would say that soon after the occurrence, they were informed about the occurrence by P.W.1. Both P.W.3 and P.W.4 would depose that they saw the accused coming out of his house after the occurrence.

6c) P.W.5 is the doctor, who had conducted autopsy on the corpse of the deceased. The doctor had noticed a contusion measuring 5 cm x 3 cm on the left side of the face near the left ear.2) a contusion measuring 5 cm x 3 cm on the centre of the head 3) fracture on the left side of the skull bone measuring 15 cm x 2 cm extending from the injuries of the skull present. Meninges and brain matter are seen protruding form the fracture site. 4)A lacerated injury on the left side of the brain surrounded by blood clot. The doctor has opined that the deceased would have died due to injuriy Nos. 1 and 2. Ex P2 is the postmortem report. The doctor has further opined that injury Nos 1 and 2 would have been caused with a weapon like M.O.1.

6d) P.W. 7 is the Sub Inspector of Police, who had registered the case under Cr.No.29/ 2000 on the basis of Ex P1 complaint.Ex P4 is the copy of the First Information Report and he has also passed on the information to P.W.8, the Investigating Officer, who had visited the place of occurrence on 25.1.2000 at about 3.30p.m., and prepared ExP5 observation Mahazar in the presence of witnesses and also had drawn a rough sketch Ex P6, and seized M.O1 bamboo stick,M.O.5 blood stained sand and M.O.6, Sample sand under Ex P7. He had conducted inquest in the presence of the witnesses and has examined the witnesses and recorded their statements. Ex P8 is the inquest report. Since the accused was absconding , he could not arrest the accused on the same day.

6e) P.W.9 is the successor of P.W.8, who took up further investigation and he had made a request to the Judicial Magistrate for sending the material objects connected with this case for chemical examination. Ex P9 is the letter of requisition. Exs P10 and P11 are the analysts' report. After completing the formalities, he has filed the chargesheet on 11.4.2000 against the accused.

7.When incriminating circumstances under Section 313 Cr.P.C.were put to the accused, he denied his complicity with the crime. The accused has not examined any witness on his side.

8. The learned trial Judge after meticulously going through the evidence both oral and documentary adduced before him, has come to a conclusion that the prosecution has proved the guilt of the accused under

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Section 304(ii) of IPC and convicted the accused under the above provisions of law and sentenced him to under go ten years rigorous imprisonment, which necessitated the accused to prefer this appeal.

9. Now the point for consideration in this appeal is whether the findings of the learned trial Judge in S.C.No.151 of 2000 on the file of the Principal Sessions Judge, Nagapattinam is liable to be set aside for the reasons stated in the memorandum of appeal?

10. Heard Mr.K.Pasupathy, learned counsel appearing for the appellant and Mr.V.R.Balasubramaniam, learned Additional Public Prosecutor for the respondent and considered their respective submissions.

11. The Point:
The learned counsel appearing for the revision petitioner/accused relying on some of the discrepancies in the evidence of P.W1 and P.W.2 would contend that both the ocular witnesses viz., P.W.1 and P.W.2 would not have witnessed to the occurrence. P.W.1 in his evidence in the cross examination has admitted that he is working in an Auto parts shop at Thiruvarur and his weekly holiday is Sunday. But the occurrence had taken place on a Tuesday. P.W.9 the investigating Officer in his cross examination would also admit that he has not investigated as to the presence of P.W.1 on the occurence day . But in the chief examination, P.W.1 has deposed that on 25.1.2000 ie., on the date of occurrence at about 1.00p.m., he was in his house with his wife, children and aunt Mayilammal, who has come to his house as a guest from Killukudi village and that on hearing a noise from the house of the accused, he and his aunt Mayilammal went inside the house of the accused and saw the accused are requesting his wife to prepare a dish with tender pumpkin, which was refused by her and out of hunger, he assaulted his wife with M.O.1 bamboo stick causing grievous injuries on her head resutlng her instantaneous death. P.W.2 has also corroborated the evidence of P.W.1. P.W.2 is none other than the brother of the accused. There is no motive attributed against P.W.1 and P.W.2 to falsely implicate the accused in this crime.

12. The other discrepancies pointed out by the learned counsel for the appellant is that according to P.W.1, Ex P1 complaint was drafted by his friend. But, P.W.7 would depose that P.W.1 came to the police station and submitted the complaint. But P.W.7 nowhere has stated that P.W1 has preferred the complaint only in the police station in his own hand.

13. The learned trial Judge, taking into consideration that there was a quarrel between the victim and the accused immediately before the occurrence and only out of sudden provocation, the accused had assaulted

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his wife with M.O.1 causing grievous injuries resulting instantaneous death, has held that the accused is liable to be convicted only under Section 304(ii) of IPC and not under Section 302 of IPC.

14. The evidence of P.W.1 and P.W.2 have been corroborated by the medical evidence. P.W.5 the doctor, who had conducted autopsy and issued postmortem certificate Ex P2, has also deposed that he could see fracture on the skull of the victim and contusion on the centre part of the head of the deceased and that injury Nos 1 and 2 are sufficient to cause the death of the victim. The doctor has opined that both the injury Nos 1 and 2 mentioned in Ex P2 would have been caused by the weapon like M.O.1. I do not find any reason to interfere with the findings of the learned trial Judge convicting the accused under Section 304(ii) of IPC.

15. At this juncture, the learned counsel appearing for the appellant would represent that some leniency may be shown on the sentence considering the age of the accused, who is now 70 and also to consider that there was no premeditation or intention of the accused to cause the death of his wife and that the occurrence had taken place only due to sudden provocation due to quarrel in the family.

16. Mr.V.R.Balasubramaniam,the learned Additional Public Prosecutor has produced a citation in Mohd Shakeel-vs- State of A.P.(2007)3 Supreme Court Cases 119) and submitted that he has no serious objection for modifying the sentence, taking into consideration ,the age of the accused and also the circumstances under which the occurrence had taken place. In the above said ratio,while convicting the accused under Section 304(ii) of IPC, the Honourable Apex Court, taking into consideration,the nature of the offence has modified the sentence from seven years to the period already undergone.

17. The learned counsel appearing for the appellant submits that the accused was in in-caceration from 29.1.2000 till 10.8.2001 ie., one year eight months and if he is once again sent to prison then he will not survive. Under such circumstances, I am of the view that the same yardstick applied by the Honourable Apex Court in the above said ratio decidenti can be applied in this case also. The point is answered accordingly.

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18. In fine, the appeal is dismissed confirming the conviction but sentence alone is modified to that of a period already undergone instead of ten years rigrigiorous imprisonment. The bail bond stands cancelled.

sg

Sd/
Asst. Registrar

/true copy/

Sub Asst.Registrar

To
1.The Principal Sessions Judge,Nagapattinam
2. The Judicial Magistrate ,Nagapattinam
3.-do- through the Chief Judicial Magistrate, Nagapattinam
4. The Public Prosecutor, High Court, Madras
5.The Superintendent of Central Prison, Cuddalore
6. The Inspector of Police, Koradacherry Police Station, Nagapattinam.
+ One cc to Mr. Mr. Pasupathy, Advocate sR 38178

ASM (co)
sg 10/7/07

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